

EXHIBIT 4

In The Matter Of:

SYNQOR, INC.

v.

CISCO SYSTEMS, INC.

MARTIN F. SCHLECHT, Sc.D. - Vol. 2

December 13, 2013

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MERRILL CORPORATION

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

Civil Action No. 2:11-CV-54-MHS-CMS

SYNQOR, INC.,

Plaintiff,

V.

CISCO SYSTEMS, INC., AND VICOR Vol. 2
CORPORATION,

Defendants

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CONTINUED VIDEOTAPED DEPOSITION OF

MARTIN F. SCHLECHT, Sc.D.

Friday, December 13, 2013

9:05 a.m.

Held at:

WILMER, CUTLER, PICKERING, HALE and DORR, LLP

60 State Street

Boston, Massachusetts

Judith McGovern Williams, Court Reporter

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18 Also present:

19 Craig Newman, Videographer

20

21 Present for afternoon session only:

22 Allison Trzop of Wilmer Hale

23

24

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1 A. Correct. 14:12:26

2 Q. Is there any discussion in any of the 14:12:28
3 patents that are involved in this case of modes of 14:12:31
4 operation? 14:12:34

5 A. Well, yes. These converters -- these 14:12:37
6 patents in this case, the specification, has 14:12:42
7 lengthy discussion about how the converter 14:12:48
8 operates, let's say in its normal mode of 14:12:51
9 operation, but also discusses things such as -- 14:12:54

10 Q. If you want to -- 14:12:55

11 A. -- startup -- startup, shut down, short 14:12:58
12 circuit conditions. 14:12:59

13 Q. Let's take a look. It is Exhibit 2 is the 14:13:02
14 '190 patent. That is at least the one that I keep 14:13:05
15 coming back to for reference to the specifications. 14:13:07

16 (Witness complying.) 14:13:13

17 A. That is the easy part. 14:13:16

18 (Pause.) 14:13:17

19 (The witness viewing Exhibit 2.) 14:13:20

20 A. So I have it in front of me. 14:13:21

21 Q. And can you identify what you were 14:13:25
22 describing. 14:13:26

23 Or let me -- let's start with can you 14:13:30

24 identify what you were what you were describing

1 when you were discussing the different modes of 14:13:36
2 operation in the '190 patent? 14:13:38

3 A. For instance, in column 16 at line 22, 14:13:52
4 there is a discussion of a fault condition in a 14:13:57
5 converter. That would be a different mode of 14:14:01
6 operation. 14:14:03

7 Q. I am sorry. You said line 22 of column 14:14:06
8 16? 14:14:06

9 A. Yes. 22 through -- the paragraph starting 14:14:09
10 at 22 through 27. 14:14:14

11 So there is a discussion of a, if you 14:14:17
12 will, a mode. This is your word. It is not in the 14:14:21
13 patent specification here. But a -- a separate 14:14:26
14 condition from the other condition that was being 14:14:28
15 discussed, separate mode, if you will, one in which 14:14:31
16 the converter has a failure, a fault. 14:14:34

17 Then following down in the next 14:14:36
18 paragraph, starting at line 28, it is talking about 14:14:42
19 while the converter is being turned on, through 14:14:50
20 that paragraph. So that is a different mode. We 14:14:52
21 can call that the turn-on transition. 14:14:55

22 I think somewhere there might also be 14:15:07
23 a discussion or at least a reference to shutting 14:15:10
24 down or turning off the converter as well.

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1 Q. There is also a reference to a normal mode 14:15:16
2 of operation in the patents? Right? 14:15:19

3 MR. REIN: In the '190? 14:15:21

4 MR. TOMPROS: I thought so, but maybe 14:15:23
5 I am wrong. 14:15:23

6 BY MR. TOMPROS: 14:15:24

7 Q. In the '190 patent specification? 14:15:25

8 A. Are you asking whether the word "normal 14:15:28
9 mode of operation" or the phrase "normal mode of 14:15:30
10 operation" is in the specification? 14:15:34

11 Q. I am. 14:15:35

12 A. I don't know that. 14:15:36

13 Q. Okay. The modes that you have just been 14:15:39
14 discussing, short circuit, turn off and turn on, 14:15:43
15 those are things that are outside of the normal 14:15:45
16 mode of operation? Is that right? 14:15:46

17 A. As I would use that, that phrase, yes. 14:15:50

18 Q. Does the '190 patent describe in its 14:15:55
19 specification anywhere an unregulated mode versus a 14:16:00
20 regulated mode for a converter? 14:16:02

21 A. It does not preclude it. As far as I 14:16:09
22 know, there is nothing in there that says it is not 14:16:12
23 allowed. 14:16:14

24 Q. Does --

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1 A. So I think a person of ordinary skill 14:16:19
2 reading the document would not be driven to think 14:16:22
3 it was not allowed, because there is nothing in it 14:16:25
4 that says so. 14:16:25

5 And so by definition, I think one -- a 14:16:30
6 person of ordinary skill in the art might consider 14:16:32
7 it as a possibility. 14:16:36

8 Q. So as I understand what you are saying, it 14:16:39
9 doesn't preclude it, but does the specification 14:16:42
10 actually describe a regulated mode versus an 14:16:46
11 unregulated mode of operation? 14:16:48

12 A. Well, I will have to ask you to clarify 14:16:54
13 your question. 14:16:55

14 Because certainly I have pointed to 14:16:57
15 potential modes of operation, like fault 14:17:00
16 conditions, startup, shut down, where a converter 14:17:03
17 might be unregulated as opposed to regulated. 14:17:08

18 Q. Okay. In the normal mode of operation, 14:17:12
19 does -- 14:17:14

20 MR. TOMPROS: Strike that. Let me 14:17:15
21 start the question again. 14:17:16

22 BY MR. TOMPROS: 14:17:16

23 Q. Does the specification of the '190 patent 14:17:19
24 describe an unregulated mode versus a regulated

1 mode in normal operation of a bus converter? 14:17:28

2 A. As I have said, it doesn't preclude it, 14:17:32

3 and to the degree a person of ordinary skill in the 14:17:34

4 art reading the document would, therefore, be 14:17:38

5 caused to think about it, then I -- then I think 14:17:42

6 you might say it describes it. 14:17:43

7 I don't think there is anything in the 14:17:46

8 specification that describes the benefits of such, 14:17:53

9 of having two different modes of operation. 14:17:55

10 Q. I do want to make sure I understand what 14:17:59

11 you're saying here. 14:18:00

12 So the specification doesn't preclude 14:18:02

13 two different modes of operation? Right? 14:18:05

14 A. I don't think there is any place that 14:18:08

15 insists that it only be one mode of operation 14:18:11

16 during normal operation. 14:18:12

17 Q. And, therefore, is it -- 14:18:13

18 MR. TOMPROS: Strike that. 14:18:14

19 BY MR. TOMPROS: 14:18:14

20 Q. Is it your testimony that, therefore, 14:18:16

21 because it doesn't preclude it, it describes it? 14:18:21

22 A. No. First of all, my testimony is what I 14:18:23

23 say, not how you characterize it. 14:18:25

24 What I said was since it doesn't

1 preclude it, it seems to me anyways that a person 14:18:34
2 of ordinary skill in the art reading it could 14:18:37
3 consider it a possibility that there would be an 14:18:41
4 unregulated mode and a regulated mode or an 14:18:44
5 unregulated mode and a semiregulated mode, and to 14:18:48
6 the degree that the patent specification, by not 14:18:51
7 precluding two different modes, causes the person 14:18:55
8 of ordinary skill in the art to consider it, well 14:18:57
9 then I, you know, I think we -- I don't quite know 14:19:00
10 what you mean by the word "describe," but it seems 14:19:02
11 to me that it causes the person to think of that 14:19:05
12 opportunity. 14:19:05
13 I do admit the -- I do say that the 14:19:12
14 specification doesn't teach any benefit of having 14:19:16
15 two different modes of operation. 14:19:17
16 Q. And it doesn't teach there being two 14:19:21
17 different modes of operation where one is regulated 14:19:24
18 and one is up unregulated, does it? 14:19:27
19 A. Well, I have said what I have said. 14:19:29
20 The fact that it doesn't preclude it 14:19:32
21 seems to me would cause the person of ordinary 14:19:34
22 skill in the art reading to it understand that it 14:19:37
23 was possible. 14:19:40
24 And given it is possible, now I think

1 we just simply have to maybe have a difference of 14:19:47

2 opinion about what you mean by the word "describe." 14:19:49

3 Q. Okay. The specification doesn't preclude 14:19:57

4 painting your bus converter yellow, does it? 14:19:59

5 A. No, is it does not. 14:20:01

6 Q. Does it teach painting your bus converter 14:20:04

7 yellow? 14:20:08

8 A. If you have a person -- what I am saying 14:20:11

9 in my answer, if a person of ordinary skill in the 14:20:14

10 art wants to consider that. But I think that is 14:20:17

11 not a very good analogy here, because a converter 14:20:20

12 is either unregulated or it is regulated. 14:20:22

13 So if it is not going to be 14:20:24

14 unregulated all the time, if the patent 14:20:26

15 specification does not require it to be unregulated 14:20:28

16 all the time, then, of course, the alternative 14:20:32

17 would be that some of the time it would be 14:20:34

18 regulated, of some type, fully regulated, 14:20:37

19 semiregulated. 14:20:38

20 And, you know, those are the choices, 14:20:42

21 whereas for colors, we could decide there is 14:20:44

22 hundreds, thousands, millions of colors. I think 14:20:48

23 it is a poor analogy. 14:20:50

24 Q. I apologize for harping on this. I just

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1 want to make sure I have got it right one way or 14:21:04
2 the other. 14:21:04

3 Reading the words of the 14:21:06
4 specification, the words of the specification never 14:21:08
5 say unregulated mode? True? 14:21:12

6 A. Well, I don't know that that -- the phrase 14:21:15
7 is not there. Correct. But it describes an 14:21:20
8 isolation stage which left to itself is 14:21:26
9 unregulated. It certainly has plenty of 14:21:28
10 descriptions like that. And then several 14:21:31
11 embodiments using that structure in different -- in 14:21:36
12 different ways. 14:21:40

13 Q. Do the words "unregulated mode" appear or 14:21:43
14 not? 14:21:43

15 A. I don't think that phrase appears in the 14:21:46
16 specification. 14:21:46

17 Q. Do the words "regulated mode" appear or 14:21:49
18 not? 14:21:49

19 A. I know the word "regulation" appears. 14:21:54

20 Q. I agree with you there. Do the words 14:21:56
21 "regulated mode" appear or not? 14:21:58

22 A. I don't think so, but, you know, the 14:22:00
23 document has what it has. It is either there or 14:22:02
24 not.

1 Q. Okay. And that's why I want to focus on 14:22:05
2 your testimony. 14:22:06

3 Does the specification teach an 14:22:10
4 unregulated mode and a regulated mode of a 14:22:12
5 converter? 14:22:15

6 MR. REIN: That is asked and answered. 14:22:16

7 THE WITNESS: Yes. 14:22:17

8 A. I think I have tried many times to answer 14:22:19
9 that question with -- I feel like to answer it once 14:22:22
10 again will -- my previous answers are as good as I 14:22:25
11 can of course. 14:22:26

12 BY MR. TOMPROS: 14:22:26

13 Q. Is it possible to answer that question yes 14:22:28
14 or no, where the question is does the specification 14:22:31
15 teach an unregulated mode and a regulated mode of a 14:22:33
16 converter? 14:22:34

17 A. I think the issue here is what is your 14:22:36
18 definition of "teach" or "describe." You know, if 14:22:40
19 you have higher levels of or more strict 14:22:45
20 interpretation of that word than I do as I am 14:22:48
21 talking, well, then I can't answer that question 14:22:51
22 without knowing exactly how you are interpreting 14:22:53
23 those words. 14:23:01

24 Q. Okay.

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1 A. And I believe my answer has always been 14:23:03
2 along the lines of it depends on how you interpret 14:23:07
3 the word "describes." I don't think you used the 14:23:11
4 word "teach" before. But it depends on how you 14:23:13
5 interpret that word. 14:23:14

6 Q. Are you familiar with the concept of a 14:23:17
7 person of ordinary skill in the art in the context 14:23:20
8 of patent law? 14:23:21

9 A. Yes. I am. 14:23:22

10 Q. All right. 14:23:23

11 A. Although I am not an attorney. 14:23:24

12 Q. And you have been an expert witness in 14:23:27
13 prior patent cases? Right? 14:23:28

14 A. I have. 14:23:29

15 Q. And you applied the concept of a person of 14:23:31
16 ordinary skill in the art? 14:23:32

17 A. As I understand it. Yes. 14:23:34

18 Q. Would a person of ordinary skill in the 14:23:38
19 art reading the specification of the '190 patent 14:23:42
20 conclude that you, the inventor of the '190 patent, 14:23:46
21 had possession of the idea of a converter that had 14:23:50
22 a regulated mode and an unregulated mode? 14:23:58

23 A. Well, what I think they would conclude is 14:24:01
24 that there is nothing in the document that forbids

1 it from having those two modes. It does not 14:24:09
2 require there be only one. 14:24:10

3 Q. Okay. Let's go back to the -- I lost the 14:24:19
4 exhibit number. I apologize. The Exhibit 33, 14:24:21
5 which is the technical specification of the NiQor 14:24:24
6 product. 14:24:25

7 (Witness complying.) 14:24:27

8 Q. And I think you may have focused on this 14:24:34
9 before, but just to be clear. 14:24:35

10 It is page 4 of that specification, 14:24:40
11 "operating input voltage range under input 14:24:43
12 characteristics." Do you see that line? 14:24:46

13 A. Yes. 14:24:46

14 Q. Okay. And that's the line that specifies 14:24:49
15 the intended operating input voltage range? Is 14:24:53
16 that right? 14:24:53

17 A. Yes. There is actually two such lines, as 14:24:56
18 we can see here, one for the output voltages being 14:25:00
19 trimmed between .9 volts and 2 and a half volts, 14:25:03
20 and one for when it is trimmed to 3.3 volts. 14:25:06

21 Q. And then you referred to that note on 14:25:08
22 page 6 -- 14:25:10

23 A. Yes. 14:25:11

24 Q. -- which described a .4 volt head room